neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the vessel any liens whatsoever except for crew's wages and salvage.'"

In view of these two clauses in the Bareboat Charter Party Agreement it cannot be held that, unless the owners bound themselves specifically with the agents, they would be liable for the claim the plaintiffs have against the charterers. For the reasons stated above, the application in the Notice of Motion above will be allowed, the writ struck out and all subsequent proceedings set aside. The Senior Assistant Registrar is ordered to assess the damages suffered by the applicants and that the plaintiffs pay to the applicants the damages assessed. Costs to be paid by the plaintiffs.

Order accordingly.

Solicitors: *Allen & Gledhill; Tennakoon, Selva & Co.*

YEW LEAN FINANCE DEVELOPMENT (M) SDN. BHD. v. DIRECTOR OF LANDS & MINES, PENANG

[O.C.J. (Arulanandom J.) May 17, 1976]

[Penang — Civil Suit No. 249 of 1974]

Land Law — Acquisition of land for residential, industrial and public purpose — Whether null and void — Land Acquisition Act, 1960, ss. 3, 7, 8, 9 & 37.

The plaintiffs purchased Lots 530(1) and 530(2), Mukim 14, Province Wellesley North in August 1972 with the intention of developing the said lands as a housing complex. The lands were allegedly charged to one Annamalai for a certain sum. On November 1, 1972 the plaintiffs' architect submitted a plan for such a housing complex to the Majlis Daerah Utara, Butterworth but on February 20, 1973 the Council's architect rejected the plan on the grounds that the said lands were being acquired under Penang *Gazette* Notification 23 of 1973. The said notification stated that the lands were being acquired for residential, industrial and public purpose.

The plaintiffs contended, *inter alia*, that the lands were being acquired for some vague purpose and therefore the notice of intended acquisition was null and void and that as a result of the wrongful acquisition the plaintiffs suffered damage.

The main issue before the court was whether the notice stating that the land was being acquired for residential, industrial and public purposes was null and void because it was vague and did not particularize the specific purpose.

Held, dismissing the suit: (1) the government was the sole authority to decide what is, or, what is not, a public purpose, and the decision by the Government in this respect could not be questioned by a civil court;

(2) it would not be possible or practical to specify the exact purpose of any particular lot. If the land was acquired for a public purpose the plaintiffs had no choice but to surrender the land to the Government, and it was immaterial to them for what purpose the land was used, as long as it was for a public purpose;

(3) there was no need for the State authority to confine its acquisition of land to purposes which came under one head only, i.e. either under section 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be.

Cases referred to:-

(1) *Secretary of State for India in Council* v. *Akbar Ali* (1923) I.L.R. 14 Allahabad 443.

(2) *Brett* v. *Brett* (1826) 3 Addams 210, 216.

(3) *R.* v. *Oakes* [1959] 2 All E.R. 92.

(4) *Green & Anor.* v. *Wood & Anor.* (1845) 14 L.J.Q.B. 217.

(5) *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor.* v. *Government of the State of Johore* [1975] 2 M.L.J. 241.

CIVIL SUIT.

Lim Kean Chye for the plaintiffs.

Mohamed Noor bin Hj. Ahmad (State Legal Adviser) for the defendants.

Arulanandom J.: This is a suit brought by the plaintiffs, Yew Lean Finance Development (M) Sendirian Berhad, against the Director of Lands and Mines, Penang, seeking the following orders: —

(1) A declaration that the said GN 23 is null and void as it fails to specify for what purpose the plaintiffs said lands are being acquired.

(2) Alternatively that the subsequent failure of the State Authority to particularise the purpose of acquisition further rendered the said notification inoperative.

(3) A further declaration that the said GN 23 is published in a form which is *ultra vires* sections 7, 8 & 9 of the Land Acquisition Act and therefore void.

(4) A declaration that the purported acquisition is of no effect because it was based on a misreading of GN 35.

(5) A declaration that the purported acquisition is of no effect because the wrong motive was applied in acquiring the lands *which* are not needed for the Prai Barrage project *or are* required for some vague purpose.

(6) A declaration that the said GN 23 is void and of no effect as it was signed by a person who is not a designated person.

(7) Damages resulting from the publication of the said GN 23 and subsequent actions of the authorities concerned and further delays consequential thereto.

(8) Costs.

The brief facts of the case are as follows. The plaintiffs were the proprietors of Lot 530(1) and Lot 530(2) Mukim 14, Province Wellesley North, hereinafter called the said lands which they purchased in about August 1972 with the intention of developing the said lands as a housing complex. The lands were allegedly charged to one S.N.A.S.A. Annamalai Chettiar for $250,000 with interest at 12% per annum. On November 1, 1972 the plaintiffs' architect submitted a plan for such a housing complex to the Majlis Daerah Utara, Butterworth but on February 20, 1973 the Council's architect rejected the plan on the grounds that the said lands were being acquired under Penang *Gazette* Notification 23 of 1973 published on the 1st of February 1973. The said Notification G.N. 23 of 1973 stated that the lands were being acquired for residential, industrial and public purpose. Subsequently the land was acquired and this suit is the result of that acquisition.

The plaintiffs' complaint about the whole acquisition was that they wrote in March 1974 to the State Secretary Penang enquiring for what particular purpose the plaintiffs' said lands were being acquired and that they received no reply. Further they said G.N. 23/73 was not signed by a designated person under the Land Acquisition Act and that the lands were being acquired for some vague purpose and

therefore the notice of intended acquisition was null and void.

Further the plaintiffs claimed that as a result of the wrongful acquisition of the said lands the plaintiffs suffered damage, namely, (1) Ex-gratia payments for removal of squatters, etc. $40,000, (2) Architects' fees if housing scheme not implemented $38,000, (3) Earth filling and bund filling $25,000, (4) Interest to the said Annamalai Chettiar at 12% p.a. as from date of *Gazette* Notification and continuing $45,000, (5) Commission for brokers $53,600.

At the trial the Managing Director of the plaintiffs gave evidence regarding the special damages. He further stated that the total amount of interest paid up to Chettiar was $78,400 and in his evidence he also said that he paid compensation to one squatter who had a pig sty and squatter house but admitted there were still squatters on the land.

Evidence was given for the defendants by various officers who had been involved with the whole scheme which resulted in acquisition of the said lands. Piara Singh (DW1) told the court he prepared the report as A.C.L.R. Butterworth to acquire about 338 acres of land adjoining Mak Mandin and this included the plaintiffs' lands. He stated that the plaintiffs' lands were coconut lands and were very good and firm lands and could be put for development straightaway and did not need filling. He further stated that there were 35 squatters on these two lots. In the whole scheme the acquisition of land involved about 600 squatters and it was the Government policy to try and resettle them in the vicinity so that their livelihood would not be affected. He further stated that when the said *Gazette* Notification 23/73 was published stating the intention of acquisition no layout plan was ready and that layout plans were only prepared after the Government took possession of the acquired lands and that possession was only taken when Form K was served on the parties and Form K under the Land Acquisition Act was issued on June 21, 1974.

He was further supported by Datuk Mohamed Yeop bin Abdul Raof (DW2) the State Secretary who said that when there was bulk acquisition of land it was not possible to particularise the purposes as detailed plans were only made later. He stated that at that stage of acquisition no one could say where the road was going to be built or where a health clinic was to be built and where industries would be located or other residential quarters or institutions of a public character were to be located.

Mohd. Khalid bin Abdullah (DW3) who conducted the inquiry gave evidence that when the plaintiffs attended the inquiry they did not submit the claim of $40,000 paid to squatters. A further fact to be noted is that when the plaintiffs filed the original statement of claim in 1974 there was no such item as commission for brokers namely $53,600. This was only added on at the date of the hearing on March 17, 1975.

The first issue before the court is whether the G.N. No. 23/73 is null and void, because (a) it does not particularise the purpose and (b) because it is not signed by a person designated under the Land Acquisition Act to issue such notices.

The second objection can be disposed of immediately because the said G.N. 23/73 was signed by the Pengarah, the designation Commissioner of Lands and Mines having been changed to Pengarah, Tanah dan Galian under the Titles of Office Ordinance, 1949, *vide* P.U.(B) 324 dated December 31, 1970. The Pengarah, Tanah dan Galian, therefore is the designated person under the Land Acquisition Act, 1960.

Plaintiffs also complained that when notice that land was likely to be acquired was given by G.N. No. 35/72, in January 1972, that notice did not include the plaintiffs' lands, and that the plaintiffs' lands were only included in G.N. 23/73, the notice of intended acquisition, by mistake.

Notice under section 4 of the Land Acquisition Act is only to inform the public that any lands in the locality described in the schedule including those lands, if any, specified by lot number or the lot numbers of neighbouring lands are likely to be needed for public purposes. It is not exhaustive. At this stage, there is no decision as to which of the lands the State Government will acquire. It is only when notice is given under section 8 of the Act that the Government is obliged to specify the particular lands and areas intended to be acquired. It is for this purpose that a plan of the particular lands and areas so specified is prepared and kept so that the public can inspect the plan during normal office hours at the Land Office and the District Office of the area in which the said lands are situate.

In the notification under section 8 in *Gazette* Notification No. 23/73 the plaintiffs' lands were included and therefore it cannot be said that the plaintiffs' lands were included by mistake because of the generality of the notice that lands are likely to be acquired in a certain locality as given by G.N. 35 of 1972.

So the substantive issue to be dealt with is whether the notice stating that the land is being acquired for residential, industrial and public purposes is null and void because it is vague and does not particularise the specific purpose. As far as the law is concerned, as is contained in the Land Acquisition Act, 1960, section 3 of the Act states as follows: —

"3. The State Authority may acquire any land which is needed —

(a) for any public purpose; or

(b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or

(c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes."

Now, therefore, Government is the sole authority to decide what is, or, what is not, a public purpose, and the decision by Government in this respect cannot be questioned by a Civil Court. In the case of *Secretary of State for India in Council* v. *Akbar Ali*[1] it has been held that where a declaration has been issued under section 6 of the Indian Land Acquisition Act, 1894, stating that certain land is required for a "public purpose," the court is debarred from inquiring

into the question whether the purpose for which the land in respect of which such a declaration has been issued is a public purpose. Although section 6 of the Indian Act does not read identically with our Act the purpose contained in that section is the same. It is quite clear from a reading of sections 3, 7 and 8 of the Land Acquisition Act, 1960 that whenever any lands are intended for any of the purposes referred to in section 3 of the Act the Collector shall prepare and submit to the State Authority under the provisions of section 7 a plan of the whole area of the said lands showing the particular lands or part thereof which it was necessary to acquire and a list of such lands in Form C. Once this is done and the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*. Section 8(2) & (3) read as follows: —

"8. (2) A copy of the list of lands referred to in paragraph (b) of section 7, amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein."

It is therefore quite clear that once a *Gazette* notification under section 8 is given it is conclusively established that the lands are needed for the purpose stated. The only complaint the owners of acquired lands can have will be if provisions of the Act have not been complied with. Furthermore, if the compensation awarded them is not adequate they have a right to appeal to the High Court. Apart from that, the question of acquisition cannot be gone into.

The plaintiffs argue that the Government has not complied with section 3 of the Act, in that there is no such thing as bulk acquisition and that "any public purpose" in section 3(a) should be read in the singular and cannot mean the plural. With this proposition I cannot agree. As long as a purpose is published it can be residential, industrial or any other purpose. *Craies On Statute Law*, Seventh Edition, at page 184, says as follows: —

"Although it often happens that the words used in a statute are, as Coleridge J. observed in *Clayton* v. *Fenwick*, 'so general that they must receive *some* limitation,' it is difficult, as the following cases will show, to lay down any general rule for arriving at the intention of the legislature as to the precise limitation which must be put upon the meaning of general words used in a statute. In cases where some limitation is called for the court may be influenced by the history, the mischief or the intention of the statute. In *Cargo ex Argos*, a similar question arose to that decided in *The Dowse*, namely, what, if any, limitation was to be put upon the meaning of the words 'any claim', as used in section 2 of the County Courts Admiralty Jurisdiction Amendment Act 1869, and although in *The Dowse* those words, as used in a statute *in pari materia* with that Act, were held to be used in a limited sense, the court declined in this case to limit the words of the Act of 1869 to 'so much of the partial and limited jurisdiction of the Admiralty Court Act 1861 as had not been included in the Act of 1868 and no more,' commenting on the fact of the wide language employed in the Act which described accurately new heads of claim."

In *Brett* v. *Brett*,[2] the question whether "any will or codicil" when used in 25 Geo 2, c.6 related to all wills and codicils, or only to those of real estate was considered. Since the title of the Act related to only real estate, Sir John Nicholl M.R. held that the title might be taken into consideration in deciding the question that any will or codicil related to wills and codicils of real estate.

In *Maxwell's Interpretation of Statutes*, Twelfth Edition, page 288 last paragraph, the interpretation of "any" is again considered. It reads:

"The Local Government Act 1933 provided that a poll might be demanded, before the conclusion of a parish meeting, 'on any question arising thereat.' This replaced a provision in the Local Government Act 1894 for a poll on any 'resolution.' The Court of Appeal held that the 1933 provision applied only to questions which had been formally put to the meeting by way of resolution or amendment to resolution, and then voted on."

It is quite clear from this interpretation that "any" does not mean the singular and that it is not necessary for parliament to say "any" or "all" to allow the plural. The State Authority's right to choose the particular purpose or purposes is neither restricted nor limited by the Act. To substitute "all" for "any" would lead to absurdity as the purposes of acquisition may be for only a few specific purposes. The discretion therefore is left with the State Authority to choose an area of land for whatever purpose or purposes it needs to acquire it. Again, to interpret the Act so as to read that each particular purpose for each particular lot of land must be specified in the notice of intended acquisition would also lead to absurdity. One of the canons of construction is that there is a presumption against interpretation of words which interpretation would lead to inconvenience, injustice, absurdity or unreasonableness. The State Authority may acquire an area for a public purpose. The area may necessarily consist of different lots of different sizes and different shapes. The object of the acquisition may be to create an industrial estate with the necessary infrastructure. This would mean that parts of the scheduled land, I repeat scheduled land, and not specific lots, may be used for the construction of factories, part of the land for construction of the roads, part of the land for constructing drains, part of the land for constructing residential houses, part for schools, *ad infinitum*. In order to derive the maximum benefit from all the lands it would only be possible to do the planning after the Government has acquired and taken possession of the land. For the Notice of Intended Acquisition to specify what particular purpose any particular lot would be put to would be to court absurdity and unreasonableness. It has been made very clear by the evidence given on behalf of the defendants that it would not be possible or practical to specify the exact purpose of any particular lot. The court is wholly in agreement with this statement. Furthermore, apart from this being impractical, it does not help the plaintiffs in any way, for, if the land is acquired for a public purpose they have no choice but to surrender the land to the Government, and it is immaterial to them for what purpose the land is being used, as long as it is for a public purpose. It may be that these acquisitions mean individual hardship is caused to individuals but in considering these matters one must realise that individual issues cannot outweigh demand for public benefit.

Counsel for the plaintiffs also urged before me that the word "or" in section 3 of the Act should be read disjunctively. I can only refer to *Maxwell On Interpretation of Statutes* page 232 under the heading, "And" or "or", which states: —

"In ordinary usage, 'and' is conjunctive and 'or' disjunctive. But to carry out the intention of the legislature it may be necessary to read 'and' in place of the conjunction 'or,' and vice versa."

An example is provided by the Bankruptcy Act, 1603, which made it an act of bankruptcy for a trader to leave his dwelling-house "to the intent, or whereby his creditors shall or may be defeated or delayed." If construed literally, this would have exposed to bankruptcy every trader who left his home, even for an hour, if a creditor called during his absence for payment. This absurd consequence was avoided by reading "or" as "and" so that an absence from home was an act of bankruptcy only when coupled with the design of delaying or defeating creditors.

Therefore in this case the State Authority need not confine its acquisition of land for purposes which come under one head only, *i.e.* either under 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be. Not to allow the interpretation of "or" as capable of meaning "and" would lead to an absurd construction of the section. Furthermore to read "and" for "or" in section 3 of the Act would again lead to absurdity because it would mean that the State Authority would only be able to acquire land if all these limbs of section 3 were satisfied. The only intelligent reading of section 3 would be to give the State Authority right either to acquire land under one limb, of section 3(a), (b) or even part of the limb of section 3(c), or to combine more than one of these purposes at the time of the acquisition. In the case of *R.* v. *Oakes*[3] a person was charged under section 7 of the Official Secrets Act, 1920, with doing an act preparatory to committing an offence under the Official Secrets Act, 1911. The section itself provides as follows: —

"'7. Any person who attempts to commit any offence under the (Official Secrets Act, 1911) or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the (Act of 1911) or this Act, shall be guilty' of an offence."

Lord Parker in his judgment upholding the decision of the trial judge said this: —

"We think that the literal construction here produces an unintelligible result, and for many reasons. In the first place, there is an obvious difficulty as to what is qualified by the words 'and does any act preparatory to the commission of an offence'. Does it qualify all the alternatives that have gone before? Does it qualify only the words that have followed the last comma, namely, 'or aids and abets', or does it qualify only the last word 'abets'? If it qualifies all that has gone before, clearly in regard to an attempt it makes nonsense, because an act preparatory to the offence is something more remote than an act which constitutes an attempt, and, accordingly, it is meaningless in connexion with attempts, and, indeed, it is difficult to give it a meaning with regard to 'solicits or incites or endeavours to persuade'. If, on the other hand, it qualifies only the words 'or aids or abets', or the word 'abets' alone, then immediately one asks: What is the sense of it applying to those words and not to the words 'solicits or incites or endeavours to persuade'. Whichever way it is read, an absurd result is obtained."

....

"Accordingly, for all those reasons it seems to this court that no intelligible meaning can be given to this section if it is read literally, and accordingly, this court agrees with the learned judge. The learned judge thought that the natural way of getting over the difficulty was to read into the Act after the word 'and' and before the word 'does' the opening words of the section, 'Any person who', so that it would read, 'or aids or abets and any person who does any act preparatory to the commission of an offence under the principal Act or this Act....' The court on the whole prefers to read the word 'or' for 'and', because, if the words 'any person who' are inserted, it leaves the words 'aids or abets' in the act, whereas if 'and' is changed to 'or' it will read in this way: 'or aids or abets or does any act preparatory to' — and then I insert a comma — 'the commission of an offence'. Indeed, read in that way it happens very closely to correspond with the only two enactments near the time, namely, the Regulations of 1914 and the Regulations of 1921."

....

"... The court feels, however, that, on principle, there is no reason, if compelled to that end, why the words should not be changed even though the result is less favourable to the subject, and, indeed, that was done in *A.G.* v. *Beauchamp*. In that case ROWLATT J., having referred to the manifest absurdity which would arise if a literal construction was given, went on in this way ([1920] 1 K.B. at p. 657):

> 'It is not really a question of adding anything to the section, for it is quite clear what the intention was, and the omission of certain words that you would expect to find there is nothing more than a faultiness of expression.' "

Counsel for the plaintiffs cited various other authorities, to support his arguments that the Notification G.N. 23/73 was defective. One of them was *Green & Anor.* v. *Wood & Anor.*[4] In that case, the judges were not willing to read the word 'and' for 'or' because as Patterson J. said:

"... But we are not to alter words in the act of parliament because they are unmeaning; and if we were to alter the word 'or' into 'and,' we could not stop there, as the word 'issuing' is also unmeaning as it stands. It is ridiculous to suppose that the legislature merely meant a writ to be issued. We must leave the section as we find it, and content ourselves with saying, that the words in question have no meaning at all."

The case cited can be distinguished from the case before us, for in this case the meaning is clear. The only question which arises is: whether, because the word "or" is used in section 3 of the Act, the purposes should be construed disjunctively, thus depriving the State Authority from acquiring land for more than one of the purposes specified in section 3. The only intelligible construction which can be given to that section is what I have stated earlier. The State Authority can acquire land for one or more or all the purposes stated in section 3, and there is no duty on the part of the authority to state in the notice of Declaration of Intended Acquisition or in any other way what specific purpose each of the specific lots in the schedule to the notice would be used for. I am fortified in my view by the decision of the Federal Court in Civil Appeal No. 88 of 1974 *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor.* v. *The Government of the State of Johore*[5] where it was held that there was no obligation on the part of the State Authority to specify what particular purpose each lot of land shown in the plan drawn up under section 8 of the Act was to be used for. Suffian L.P. in delivering the judgment of the court said:

"With all due respect we do not think there is any merit in the contention that these acquisition proceedings were null and void.

"It is true that section 7 requires the Collector to prepare

and submit a plan to the State Authority, but this is for the purpose of showing the particular lands or parts thereof which it will be necessary to acquire, and so the plan is for the convenience of the State Government. After study of this plan, Government may decide that all the lands shown on it are needed, or only some of them, or only some of them and part or parts of others.

Only after the State Authority has *decided* which of the lands referred to in the plan and to what extent, are needed for any of the purposes set out in section 3, is it necessary for a declaration in Form D to be gazetted under section 8. With respect, we agree with the learned judge that the meat of this declaration is contained in its first paragraph, for while it is true that its second paragraph refers to a plan, that is only to enable owners and other interested persons to check whether or not their lands are to be acquired and if so to what extent. Section 8 does not require that the purposes for which the lands or parts are to be acquired, should be stated on the plan, and it would appear that it was quite unnecessary for — and in the event foolish of — the State Authority to invite the applicants and other owners to inspect the rather elaborate plans prepared in the instant case. All that section 8 requires (by its subsection (2)) is that a list of the lands or parts thereof that are needed by the State Authority be included in a schedule to Form D. That was done here, and so in our view the declaration in that Form in the words of subsection (3) of section 8 is 'conclusive evidence that all the scheduled [lands] referred to therein [are] needed for the purpose specified therein'."

Since I have held that the notices given under the Act are valid and effective and comply with the provisions under the Land Acquisition Act and the acquisition was lawful and did not infringe any of the provisions of the Act, it naturally follows that the plaintiffs are only entitled to damages if in the process of acquiring the lands the defendants acted *mala fide*. There is no allegation or evidence of this before this court.

The collector under the provisions of the Act conducted the inquiry as to the compensation to be paid to the plaintiffs. It is alleged by the defendants that certain types of damage were not brought to their notice. However, whatever it may be, the collector conducted an inquiry and made an award of compensation. Having considered all the circumstances, the plaintiffs have not asked for a reference to the court on the award. Part V (section 37) of the Act lays down a procedure for any person who is not satisfied with the amount of compensation to make objection in spite of which the plaintiffs have not sought to challenge the award by way of a reference to the court. Therefore, the question of damages does not arise. Furthermore, as pointed out by counsel for the defendant, the payment of compensation by the plaintiffs is purported to be made on August 27, 1973, *i.e.*, after the Notice of Declaration of Intended Acquisition was published on February 1, 1973. There was no need for such compensation to be made and the beneficial interest in the land has already been taken away from them. In addition, no conclusive proof of the other losses were adduced in court.

For these reasons stated above the suit is dismissed with costs.

Suit dismissed.

Solicitors: *Lim Kean Chye & Co.*

SEIKO ELECTRONICS INDUSTRIES SDN. BHD. v. CHUNG KHIAW BANK LTD.

[O.C.J. (Syed Othman J.) August 4, 1976]
[Johor Bahru — Civil Suit No. 118 of 1975]

Practice and Procedure — Final judgment given against debtor — Appeal against award of interest — Whether it contravened O. 40 r. 11(2) — R.S.C. 1957, O. 14 and O. 40, r. 11(2).

Order 40 rule 11 read as a whole bears no intention to disturb rights in the matter of interest agreed upon by the parties. It would be another matter if the rate of interest charged contravenes some specific provision of law.

Cases referred to:-

(1) *Ex parte Fewings* [1882] 25 Ch.D. 338, 355.

(2) *Economic Life Assurance Society* v. *Usborne & Ors.* [1902] A.C. 147.

CIVIL SUIT.

Chua Jui Leng for the appellant/first defendant.

L.M. Ong for the respondent/plaintiff.

Syed Othman J.: The appellant (first defendants) appeals against the decision of the Senior Assistant Registrar on October 15, 1975 ordering (under Order 14 Rules of the Supreme Court) the respondent (bank) to be at liberty to sign final judgment in an action against the appellant in the sum of $541,157.08 with interest at 12.5% per annum with monthly rests from March 21, 1975 until payment thereof as in the statement of claim and $200 costs.

The bank's statement of claim avers that the appellant is indebted to the bank in the sum of $619,662 at interest originally at 9.5% per annum and thereafter at 12.5% per annum with monthly rests for bank charges as on March 20, 1975; the other defendants by a letter of guarantee of November 20, 1972 jointly and severally guaranteed payment of all moneys lent or advanced by the bank to the appellant together with interest, commission and bank charges up to the total of $200,000 and then by a letter of guarantee on January 20, 1973 the sum was enlarged to $1,050,000; on letters of demand to all defendants to pay, the appellant on March 15, 1975 paid only $78,505.50 leaving a balance of $541,157.08. The appellant, in defence, denies the claim but says in the alternative, that if the sum is found due and owing, the whole is not due and payable, as the bank had agreed to payment by instalments; admits having paid $78,505.50 but denies the balance due, and says, in the alternative, the full balance as denied is not due as the claim is premature.

The bank applied for summary judgment against the appellant for the balance at interest 12.5% with monthly rests from March 21, 1975. The affidavit by the Branch Manager of the Bank, supporting the application, sets out the account showing the balance; deposes that a demand for payment of the balance was made on April 2, 1975 and the appellant in reply by letter dated April 3, 1975 admits the balance as the sum owing and that the bank has been asking for the overdue amount all the time. The relevant portion of the appellant's letter (Exhibit B) to the bank's solicitors reads:

"We understand our company at this stage incur debts to your client of $619,662 of which $78,505.50 had been settled